

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JESSIE TRAYLOR,)	
)	
Petitioner,)	
)	
vs.)	No. 2:14-cv-0277-WTL-WGH
)	
J. CARAWAY,)	
)	
Respondent.)	

Entry Discussing Petition for Writ of Habeas Corpus

Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face.” *McFarland v. Scott*, 512 U.S. 849, 856 (1994). Accordingly, a habeas petition “should be denied at once if the issues it raises clearly have been forfeited or lack merit under established law.” *O’Connor v. United States*, 133 F.3d 548, 551 (7th Cir. 1998). This is an appropriate case for such a disposition. This conclusion rests on the following facts and circumstances:

1. Jessie Traylor was confined in this District when this action was filed and seeks a writ of habeas corpus with respect to his conviction after trial by jury of drug offenses entered in the United States District Court for the Central District of Illinois. *See United States v. Traylor*, 405 F. App’x 73, 74 (7th Cir. 2011).

2. A motion pursuant to 28 U.S.C. § 2255 is the presumptive means by which a federal prisoner can challenge his conviction or sentence. *See Davis v. United States*, 417 U.S. 333, 343 (1974); *United States v. Bezy*, 499 F.3d 668, 670 (7th Cir. 2007). A § 2241 petition by a federal prisoner is generally limited to challenges to the execution of the sentence. *Valona v. United States*,

138 F.3d 693, 694 (7th Cir. 1998); *Atehortua v. Kindt*, 951 F.2d 126, 129 (7th Cir. 1991). A petition challenging the conviction may be brought pursuant to 28 U.S.C. § 2241 only if § 2255 “would not . . . be[] adequate to test the legality of the conviction and sentence.” *Melton v. United States*, 359 F.3d 855, 858 (7th Cir. 2004); 28 U.S.C. § 2255(e).

3. A remedy via § 2255 is “inadequate or ineffective to test the legality of [the] detention” when a legal theory that could not have been presented under § 2255 establishes the petitioner’s actual innocence. *In re Davenport*, 147 F.3d 605 (7th Cir. 1998). “A procedure for postconviction relief can fairly be termed inadequate when it is so configured as to deny a convicted defendant any opportunity for judicial rectification of so fundamental a defect in his conviction as having been imprisoned for a nonexistent offense.” *Id.* at 611.

4. Traylor followed the customary path. After his direct appeal, he filed a collateral challenge pursuant to § 2255(a). The trial court denied that relief, rejecting among other claims Traylor’s arguments that the prosecution failed to honor its obligation to turn over discovery prior to trial and that he was denied the effective assistance of counsel. *Traylor v. United States*, 2012 WL 4760721 (C.D.Ill. Oct. 5, 2012).

5. Traylor seeks relief here based on his renewed claims that there was prosecutorial misconduct in his case and that he was denied the effective assistance of counsel. He acknowledges having sought relief pursuant to 28 U.S.C. § 2255, but explains that remedy was inadequate or ineffective because two of his claims were not addressed to his satisfaction.

6. It is the inmate's burden to show that a § 2241 remedy is the proper one. *Jeffers v. Chandler*, 253 F.3d 827, 830 (5th Cir. 2001). “The essential point is that a prisoner is entitled to one unencumbered opportunity to receive a decision on the merits.” *Potts v. United States*, 210 F.3d 770 (7th Cir. 2000).

7. The 28 U.S.C. § 2255 action Traylor filed provided Traylor with all the opportunity the law contemplates. His motion was denied. Despite his dissatisfaction with the outcome, he is not entitled to use § 2241 for another bite at the post-conviction apple. *Garza v. Lappin*, 253 F.3d 918, 922 (7th Cir. 2001)(“The mere fact that Garza's petition would be barred as a successive petition under § 2255, however, is not enough to bring the petition under § 2255's savings clause; otherwise, the careful structure Congress has created to avoid repetitive filings would mean little or nothing.”). As one district judge has explained:

The rule against successive § 2255 motions, and the one-year statute of limitations, would be rendered meaningless if a prisoner who is procedurally barred from bringing a § 2255 motion could simply argue that the remedy provided by that statute has become “inadequate or ineffective,” and that he should therefore be allowed to bring his claims in a § 2241 habeas corpus petition.

Irwin v. Fisher, 2009 WL 1954451, *3 (D.Minn. July 6, 2009); *see also Buford v. Superintendent*, 2008 WL 2783257, *4 (S.D.Ind. July 16, 2008)(“The above circumstances show that Buford's § 2241 habeas claim *was* presented and rejected in an action pursuant to 28 U.S.C. § 2255 . . . that Buford has not advanced a legal theory which establishes his actual innocence. . . . [and] that Buford has not carried his burden of showing that his § 2241 habeas claim can be considered here because § 2255 is inadequate or ineffective to test the legality of his detention.”). This action is also completely aligned with the analysis of Judge Caputo of the Middle District of Pennsylvania:

The allegations of Mr. Santos' habeas petition do not suggest he is entitled to resort to seeking habeas relief under 28 U.S.C. § 2241 on the grounds that a petition under 28 U.S.C. § 2255 would be ineffective or inadequate. Clearly this is not a situation where Mr. Santos did not have a prior opportunity to raise the claims presented in his petition. Petitioner filed a motion pursuant to § 2255, raising many of the same claims. He may not file a § 2241 petition simply because he is dissatisfied with the results of his previous § 2255 petition. The remedy afforded under § 2241 is not intended as an additional, alternative, or supplemental remedy to that prescribed under § 2255. Thus, upon careful review, the representations of Felix Santos' present petition are simply insufficient to persuade the Court that 28 U.S.C. § 2255

would be either ineffective or inadequate to test the legality of his detention. Furthermore, Petitioner does not suggest he stands convicted for conduct later deemed to be noncriminal by a change in law allowing him to invoke the “savings clause” of § 2255(e).

Santos v. United States, 2010 WL 181744, at *2 (M.D.Pa. Jan. 13, 2010). These are not new insights. “Something more than mere disagreement [with the previous habeas court] must be shown to justify a successive habeas petition.” *Williams v. Lockhart*, 862 F.2d 155, 158 (8th Cir. 1988)(quoting *Walker v. Lockhart*, 726 F.2d 1238, 1250 (8th Cir.)(en banc)(Arnold, J., concurring), *cert. dismissed*, 468 U.S. 1222 (1984)).

8. A “federal prisoner should be permitted to seek habeas corpus only if he had no reasonable opportunity to obtain earlier judicial correction of a fundamental defect in his conviction or sentence because the law changed after his first 28 U.S.C. § 2255 motion.” *Hill v. Werlington*, 695 F.3d 644, 648 (7th Cir. 2012). Traylor has not met that burden.

9. Instead, based on the foregoing explanation, Traylor has sought relief pursuant to 28 U.S.C. § 2241 under circumstances which do not permit or justify the use of that remedy. This is apparent from the face of his petition, together with the history of the conviction he now challenges. His petition for a writ of habeas corpus is **denied**.

Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 5/26/15

Distribution:

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Hon. William T. Lawrence, Judge
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